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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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9 ANTHONY L. TOTTEN, ) No. C 07-05974 TEH (PR  
10 Petitioner, ) ORDER TO SHOW CAUSE  
11 vs. )  
12 SCOTT RAWERS, Warden, )  
13 Respondent. )  
14

15 On November 27, 2007, Petitioner, a California state prisoner, filed a pro se  
16 petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California  
17 Board of Parole Hearings' ("BPH") decision to deny him parole on August 2, 2006, while  
18 he was housed at the Correctional Training Facility in Soledad, California. Petitioner has  
19 paid the filing fee. This order directs Respondent to show cause why the petition should  
20 not be granted.  
21

22 **BACKGROUND**

23 According to the petition, Petitioner was convicted in the Superior Court of the  
24 State of California in and for the County of Orange of attempted murder with the use of a  
25 firearm and sentenced to a term of seven years-to-life in state prison on January 3, 1992.

26 Petitioner has been found unsuitable for parole each time he has appeared before  
27 the BPH. He specifically challenges the BPH's decision after his fourth parole  
28 consideration hearing finding him not suitable for parole on August 2, 2006. Petitioner's

claims have been exhausted before the California Supreme Court, which denied  
Petitioner's state habeas petition on September 25, 2007.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a  
person in custody pursuant to the judgment of a State court only on the ground that he is  
in custody in violation of the Constitution or laws or treaties of the United States." 28  
U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the Respondent to show cause  
why the writ should not be granted, unless it appears from the application that the  
applicant or person detained is not entitled thereto." Id. § 2243.

### B. Legal Claims

Petitioner seeks federal habeas corpus relief from the BPH's decision finding him  
not suitable for parole on the grounds that the BPH based their decision on immutable  
factors in violation of due process. Liberally construed, Petitioner's claim appears  
colorable under § 2254 and merits an answer from Respondent. See Biggs v. Terhune,  
334 F.3d 910, 914-15 (9th Cir. 2003) (finding that initial refusal to set parole date for  
prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole  
which cannot be denied without adequate procedural due process protections).

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition  
and all attachments thereto on Respondent and Respondent's attorney, the Attorney  
General of the State of California. The Clerk also shall serve a copy of this order on

1 Petitioner.


2 2. Respondent shall file with the Court and serve on petitioner, **within sixty**  
3 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of  
4 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
5 should not be issued. Respondent shall file with the answer and serve on petitioner a  
6 copy of all portions of the state trial record that have been transcribed previously and that  
7 are relevant to a determination of the issues presented by the petition.

8 3. If Petitioner wishes to respond to the answer, he shall do so by filing a  
9 traverse with the Court and serving it on Respondent **within thirty (30) days** of his  
10 receipt of the answer.

11 4. Petitioner is reminded that all communications with the Court must be  
12 served on Respondent by mailing a true copy of the document to Respondent's counsel.  
13 Petitioner must also keep the Court and all parties informed of any change of address.

14 SO ORDERED.

15 DATED: 03/27/08

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18 THELTON E. HENDERSON  
19 United States District Judge  
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